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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,
10 Plaintiff,

Case No. CR11-383RSL

11 v.

ORDER GRANTING
MOTION TO COMPEL

12 JACK PERSHING SEXTON and
13 RONALD CLAUDE KETTELLS,

Defendants.

14 This matter comes before the Court on the United States' "Motion to Compel
15 DNA Samples, Hair Samples, and Major Case Prints" (Dkt. # 46). The United States
16 asks the Court to compel the Defendants to provide buccal swab DNA samples, hair
17 samples, and major case prints so that it can compare them to samples found on items
18 believed to have been used in the commission of the series of armed robberies for which
19 each Defendant was indicted. The Court GRANTS the motion.

20 The Court notes that "the obtaining of physical evidence from a person involves a
21 potential Fourth Amendment violation¹ at two different levels—the 'seizure' of the
22 'person' necessary to bring him into contact with government agents and the subsequent
23 search for and seizure of the evidence." Dionisio, 410 U.S. at 8 (internal citation
24 omitted). In this case, the first level is not at issue. An indictment has been returned

25 ¹ There is no Fifth Amendment claim. United States v. Dionisio, 410 U.S. 1, 6 (1973).

1 against each Defendant, Dkt. # 23, and a neutral magistrate has found probable cause to
2 seize each Defendant, Dkt. # 1. The Court thus moves to the second level question:
3 whether, “‘given all the circumstances set forth in the affidavit before [the Court] . . .
4 there is a fair probability that contraband or evidence of a crime will be found in a
5 particular place.’” United States v. Tan Duc Nguyen, 673 F.3d 1259, 1263 (9th Cir.
6 2012) (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)).

7 Notably, probable cause is established so long as the government demonstrates a
8 “fair probability . . . ‘or substantial chance of criminal activity.’” Id. at 1264 (citations
9 omitted). And while a “more substantial justification” may be required in cases where a
10 “substantial” bodily intrusion is sought, Winston v. Lee, 470 U.S. 753, 755 (1985), this
11 is not such a case. See Schmerber v. California, 384 U.S. 757, 772 (1966) (finding
12 blood draws to be a minor intrusion). Buccal DNA swabs, hair samples, and
13 fingerprinting have all been found to be minimally invasive, requiring, at most, ordinary
14 probable cause. E.g., Haskell v. Harris, 669 F.3d 1049, 1060 (“The typical modern
15 DNA collection procedure—the buccal swab—is far less invasive than the blood test
16 approved in Schmerber. . . . [It] cannot seriously be viewed as an unacceptable violation
17 of a person’s bodily integrity.”); id. at 1060 (“We agree with the dissent’s concession
18 that ‘fingerprints and DNA are similar.’ We also generally have no quarrel with the
19 dissent’s statement that the Supreme Court has ‘held that fingerprints may not be taken
20 unless there is consent, a warrant, or probable cause.’”); cf. United States v. Kincade,
21 379 F.3d 813, 836 n.31 (9th Cir. 2004) (en banc) (noting a distinction between routine
22 fingerprint booking of arrestees for identification purposes—for which no additional
23 suspicion is required—and fingerprinting of “free persons” for investigatory purposes”).

23 Accordingly, the Court considers whether the United States has met its burden of
24 demonstrating a fair probability of a particularized nexus between the Defendants, the
25 bodily evidentiary items to be seized, and the criminal activity. It finds that it has. The
26 Defendants were stopped and arrested while driving a vehicle identified as being at the

1 scene of one of the robberies. See Dkt. # 1. And a search of their homes resulted in the
2 seizure of weapons, masks, and wigs matching the description of those used in the
3 robberies, as well as the discovery of other evidence and vehicles tying them to the
4 crimes. See id. (describing in detail the evidence and its similarities). The weapons,
5 masks, and wigs have already been sent to the FBI laboratory in Quantico, Virginia,
6 which found DNA, blond hairs resembling the Defendants', and fingerprint samples.
7 Dkt. ## 46-2. 46-3. Accordingly, there is more than enough probable cause to tie the
8 Defendants to the evidence and the evidence to the crime to justify the seizure of the
9 requested samples from each Defendant.²

10 Moreover, the Court sees no reason to deny the United States' request as to the
11 DNA or the fingerprints simply because the United States may have already procured
12 similar samples. As the United States' explains, the laboratory requests new DNA
13 samples in order to confirm that the CODIS record is accurate. Frankly, this is not only
14 logical, but reassuring. It minimizes the risk that an erroneous positive will result in the
15 conviction of an innocent defendant. And while Defendants may have been
16 fingerprinted already in this case, major case prints—a far more thorough recording of
17 all the friction detail ridges covering the hand—have not been obtained.

18 For all of the foregoing reasons, the Court thus GRANTS the United States'
19 motion to obtain buccal swab DNA samples, hair samples, and major case prints from
20 each Defendant.

21 DATED this 31st day of May, 2012.

22 

23 Robert S. Lasnik
24 United States District Judge

25 ² This is especially true of Defendant Sexton given the laboratory's preliminary finding
26 of a DNA match to the record of his DNA in the CODIS database. Dkt. # 46-3.